

## ARC 0286B

### IOWA FINANCE AUTHORITY[265]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(17), the Executive Director of the Iowa Finance Authority (Authority) proposes to amend Chapter 8, “Private Activity Bond Allocation,” Iowa Administrative Code.

The proposed amendments provide a process for receiving applications for the state ceiling of private activity bonds. The process will permit applicants to apply for an allocation of the state ceiling for a given calendar year by submitting applications prior to the first business day of the year. Applications so received will be treated as having been received on the first business day of the calendar year. This procedure will allow the Authority to treat all applications submitted before the first business day of the calendar year as though they were received simultaneously, so that applicants will not be forced to line up outside the Authority’s office the night before the first business day of the year in order to file their applications with the Authority. The proposed amendments set forth a procedure for determining the order of preference for allocation of the state ceiling that the simultaneously received applications will receive in the event applicants seek more bond allocation than is available under the state ceiling.

The Authority does not intend to grant waivers under the provisions of any of these rules. Waivers could result in noncompliance with the provisions of Iowa Code chapter 7C.

Consistent with Executive Order Number 9, the Authority has considered the regulatory principles identified in the Order and finds that the proposed amendments will serve an important public need in providing a fair and equitable procedure for receiving applications for allocations of the private activity bond state ceiling and determining the order of allocating the state ceiling among simultaneously received applications.

The Authority will receive written comments on the proposed amendments until the close of business on December 12, 2000. Comments may be addressed to Loyd Ogle, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309. Comments may be faxed to Loyd Ogle at (515) 242-5650. Comments may be E-mailed to Loyd Ogle at [loyd.ogle@ifa.state.ia.us](mailto:loyd.ogle@ifa.state.ia.us).

The Authority will hold a public hearing on December 5, 2000, to receive public comments on these amendments. The public hearing will be held at 9 a.m. in the Conference Room, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309.

The Authority anticipates that it may make changes to these amendments based on comments received from the public.

These amendments are intended to implement Iowa Code chapter 7C and Internal Revenue Code Section 146.

The following amendments are proposed.

ITEM 1. Amend rule 265—8.1(7C) as follows:

**265—8.1(7C) General.** The governor has appointed the executive director of the Iowa finance authority as the governor’s designee responsible for administration of the law which establishes procedures for allocation of private activity bonds as defined in Section ~~103(a)~~ 141 of the Internal Revenue Code ~~of 1954~~. Procedures set out in the law and in these rules shall be followed in allocating the private activity bond state ceiling (“state ceiling”) between cities, counties and the state of Iowa. *For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes in the percentages set forth in Iowa Code section 7C.4A. The state ceiling shall be allocated among all issuers for those various purposes annually in accordance with Iowa Code chapter 7C and these rules. All applications received in any calendar year shall expire as of December 31 of that year.*

ITEM 2. Amend rule 265—8.3(7C) as follows:

**265—8.3(7C) Formula for allocation.**

**8.3(1)** The state ceiling shall be allocated among all issuers on the basis of chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the governor’s designee.

**8.3(2)** *All applications that are submitted for receipt pursuant to the provisions of subrule 8.4(2) shall be considered simultaneously received at the opening of business on the first business day of the calendar year and the same date, hour and minute shall be stamped on each application so received.*

*a. If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek allocations of bonds for industries pursuant to Iowa Code subsection 7C.4A(5) exceed the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3)“a.”*

*b. If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek allocations of private activity bonds issued by public*

subdivisions, the proceeds of which are used by the issuing subdivision pursuant to Iowa Code section 7C.4A(6), exceed the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3)“b.”

**8.3(3) Allocation process.**

a. In order to determine the order of allocation of the state ceiling to each of the applications for industrial purposes that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority’s staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

b. In order to determine the order of allocation of the state ceiling to each of the applications for state ceiling for political subdivisions that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Applications shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority’s staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

**8.3(4)** The governor’s designee shall maintain one list of applications for private activity bonds for the purpose of

industries and a separate list for applications for private activity bonds for the use of political subdivisions. The applications that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4) shall be listed in the order of preference established pursuant to paragraphs 8.3(3)“a” and 8.3(3)“b.” Applications received after the opening of the first day of business of a calendar year shall be added to the appropriate list depending upon the subject of the application in the chronological order received.

**8.3(5)** Formula for allocations following June 30 of each year. As permitted by Iowa Code section 7C.5, following June 30 of each year issuers which initially applied for state ceiling allocated under Iowa Code section 7C.4A(6) for bonds, the proceeds of which are to be used by the issuing political subdivision, shall be given priority over any applications received for state ceiling for bonds otherwise requiring an allocation under Section 146 of the Internal Revenue Code.

This rule is intended to implement Iowa Code sections 7C.5 and 7C.4A(7)“a.”

ITEM 3. Amend rule 265—8.4(7C) as follows:

**265—8.4(7C) Application for allocation.**

**8.4(1)** An issuer or beneficiary, or the duly authorized agent of an issuer or beneficiary, must make an application, by filing the form available from the governor’s designee entitled, “Application and Response,” for the allocation of a portion of the private activity bonds state ceiling.

**8.4(2)** Applications for any given calendar year may be submitted to the Iowa finance authority offices during the month of December of the previous year with a request that the application be treated as received when the authority opens for business on the first business day of the calendar year for which the application is made. Applications submitted in this manner must be contained in a sealed envelope that is clearly marked with words such as: “This application for private activity bond allocation for year 2001 is to be held for constructive delivery and receipt, and stamped “received” by the Iowa Finance Authority upon the opening of business on the first business day of calendar year 2001.” Applicants should also indicate the type of bond for which application is made and the amount requested on the outside of the sealed envelope. There may be only one application for each separate project. All applications so received will be deemed received simultaneously as of the date, hour and minute of the opening of business of the Iowa finance authority on the first business day of the calendar year for which application is made. Expired applications made in previous years may be resubmitted to the authority pursuant to this procedure.

**8.4(3)** Applications for any given calendar year may be submitted to the Iowa finance authority offices at any time during the calendar year. Applications must be contained in a sealed envelope that is clearly marked with the year

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*for which the application is made, the type of bond sought, and the amount of the state ceiling requested. Applications received during the calendar year will be immediately stamped with the day, hour and minute they are received by the authority.*

**8.4(4)** *All applications received pursuant to the provisions of subrule 8.4(2) will be deemed to have been received simultaneously on the date, hour and minute that the authority opens for business on the first business day of the year for which the applications are made.*

*This rule is intended to implement Iowa Code sections 7C.4A and 7C.5.*

ITEM 4. Amend rule 265—8.5(7C) as follows:

**265—8.5(7C) Certification of allocation.** *This rule implements 2000 Iowa Acts, chapter 1166, section 8, providing that “for the calendar year beginning January 1, 2001, applications for the state ceiling allocation under [Iowa Code] section 7C.4A, subsection 5, shall not be approved prior to March 1.” For the calendar year beginning January 1, 2001, unless Iowa Code chapter 7C has been otherwise amended, ~~Upon~~ upon receipt of a completed application, the governor’s designee shall promptly, commencing March 1, 2001, certify to the issuer the amount of the state ceiling allocated to the bonds for the purpose of the project for which the application was submitted, in the order as determined by Iowa Code chapter 7C and rules 8.3(7C) and 8.4(7C). The governor’s designee shall continue to allocate the state ceiling for each purpose separately until all the available state ceiling for that purpose is fully allocated. If there is not sufficient available state ceiling to fully fund an application which is next in order for allocation, the governor’s designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor’s designee of its decision to take the available allocation within five calendar days of receiving notice of that option, the available state ceiling shall be offered to the next application on the list under the same conditions, and the initial offeree will maintain its position on the list. If the partial allocation is accepted, the applicant shall submit a new application for additional state ceiling and that application will be added to the bottom of the list in the chronological order of its receipt.*

*If the bonds are issued and delivered prior to the expiration date of the allocation, then the issuer or the issuer’s attorney shall within ten days following the issuance and delivery of the bonds notify the governor’s designee by filing the form captioned “Notice of Issuance and Delivery of Bonds.” Upon receipt of the form the governor’s designee shall return a time-stamped copy of the form to the issuer or issuer’s attorney.*

ITEM 5. Rescind rule 265—8.9(7C) and adopt the following **new** rule in lieu thereof:

**265—8.9(7C) Use by political subdivisions.** *With respect to the amount of the state ceiling allocated for the purpose of private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions, the political subdivision must use the proceeds to finance a project owned or utilized directly by the political subdivision, or finance a program of the political subdivision which the legislature by statute has authorized or directed the political subdivision to implement.*

*This rule is intended to implement Iowa Code section 7C.4A(6).*

ITEM 6. Adopt **new** rule 265—8.10(7C) as follows:

**265—8.10(7C) Application and allocation fees.** *The Iowa finance authority may charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the private activity bond state ceiling in accordance with these rules. A fee of 1 basis point (.01%) of the amount of state ceiling for which application is made shall be paid by the applicant upon filing the application with the governor’s designee. An additional fee of 1 basis point shall be paid by the applicant upon receipt of the certification by the governor’s designee of the state ceiling allocated.*